89-945

(3)

No.

IN THE

Supreme Court of the United States

October Term 1989

WEDGE GROUP INCORPORATED,

Petitioner,

v.

THIRD NATIONAL BANK IN NASHVILLE,

Respondent.

On Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. To establish personal jurisdiction over a nonresident defendant, is it sufficient that the defendant has purposefully established minimum contacts with the forum and that the cause of action substantially relates to those contacts?

II. Do a nonresident corporation's own actions directed toward a resident subsidiary and the subsidiary's local bank constitute jurisdictionally significant "contacts" in a cause of action related to those actions?

PARTIES

The caption contains the names of the parties. Third National Bank in Nashville is a wholly owned subsidiary of Third National Corporation, which is a wholly owned subsidiary of Sun Trust Banks, Inc.

All subsidiaries of Third National Bank in Nashville are wholly owned subsidiaries, with the exception of Sun Trust Service Corporation. Sun Trust Service Corporation is wholly owned by banks owned by Third National Corporation, Sun Banks, Inc. and Trust Company of Georgia.

In addition to its ownership of Third National Bank in Nashville, Third National Corporation owns a 100% interest in Third Financial Services, Inc., and Trust Company of Tennessee, and in thirteen banks located within the State of Tennessee. Third National Corporation also owns a 99.9% interest in Peoples Bank in Lebanon, Tennessee.

In addition to its ownership of Third National Corporation, Sun Trust Banks, Inc. owns a 100% interest in Sun Banks, Inc., Trust Company of Georgia, SBF Agency, Inc., Sun Trust Data Systems, Inc., Sun Trust Insurance Company, Sun Trust Mortgage, Inc., Sun Trust Properties, Inc., and Sun Trust Securities, Inc.

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THIRD NATIONAL BANK IN NASHVILLE ("Third National"), respondent, responds as follows to the Petition for Writ of Certiorari:

STATEMENT OF THE CASE

A. Facts

From 1982 to 1986, respondent Third National made loans to The Rodgers Companies, Inc. ("TRC"), a Delaware corporation with its principal place of business in Nashville, Tennessee. App. L. ¶ 2. TRC was a wholly owned subsidiary of petitioner WEDGE Group Incorporated ("WEDGE"), a Delaware corporation with its prin-

cipal place of business in Texas. App. J. ¶ 2; App. K. ¶ 2. As partial security for the loans, TRC granted to Third National security interests in all its accounts receivable and other rights to payment. App. J. ¶ 5; App. L. ¶ 3.

One of those accounts receivable or rights to payment is evidenced by a tax sharing agreement dated October 1, 1980, executed by WEDGE and by TRC and its subsidiaries (the "Tax Sharing Agreement"). *Id.* The Tax Sharing Agreement created certain obligations for WEDGE and TRC in connection with WEDGE's filing of consolidated federal income tax returns for a consolidated group consisting of WEDGE, TRC and their respective subsidiaries. App. H., Exhibit D.

TRC's obligations under the Tax Sharing Agreement included the submission to WEDGE of hypothetical tax returns based on a non-consolidated filing, and certain periodic tax payments to be made to WEDGE. *Id.* WEDGE's obligations under the Tax Sharing Agreement included (1) annual payments to TRC of amounts by which TRC's tax payments to WEDGE exceeded its hypothetical tax liability, (2) payment to TRC for TRC operating losses used by WEDGE to offset income of others in the consolidated group, and (3) payments to be made to TRC upon its withdrawal from the consolidated group. *Id.*

Throughout the term of the Tax Sharing Agreement, WEDGE actively participated in the affairs of TRC. From 1980 through 1986, WEDGE officers met regularly with management personnel of TRC in Nashville, Tennessee, to review, discuss, and direct the operations and financial activities of TRC and its subsidiaries. App. J. ¶¶ 8-9. From 1980 to early 1984, these meetings were held monthly. From 1985 to 1986 the frequency of these meet-

ings was reduced to approximately three to four times per year. *Id.*

In April and May of 1985, the financial condition of TRC worsened. App. L. ¶ 5. In the midst of TRC's financial crisis, WEDGE initiated negotiations with Third National to induce Third National to continue to extend credit to TRC. *Id.* These negotiations resulted in the execution of an amendment dated as of June 5, 1985 to the loan agreement between TRC and Third National (the "Third Amendment"). *Id.* WEDGE's role in the management of TRC was so important to Third National that the Third Amendment specifically provided that any material change in WEDGE's direct or indirect control of TRC would constitute an event of default under the loan agreement. App. L. ¶ 8.

To induce Third National to enter into the Third Amendment, WEDGE agreed to contribute and did contribute $7,500,000 in cash to TRC, to be treated as capital on TRC's books. App. L. ¶ 6. These funds were deposited into a new checking account at Third National, in Nashville, to be used in the ordinary course of business of TRC and its subsidiaries, and to act as additional collateral for Third National's loans to TRC. *Id.* Only certain officers of WEDGE, and no officers of TRC, were authorized to direct disbursements from the account. *Id.* Following the execution of the Third Amendment, WEDGE representatives spent extended periods of time in Nashville, Tennessee, reviewing the receivables and payables held by TRC and its subsidiaries and setting up a cash reporting system. App. J. ¶ 13; App. K. ¶ 6.

In early 1986, the financial condition of TRC and its subsidiaries worsened again. App. J. ¶ 14; App. K. ¶ 7; App. L. ¶ 9. In the course of working out some serious

financial problems with Third National, WEDGE and TRC management began negotiations for the sale of WEDGE's TRC stock to TRC management. *Id.* In conjunction with those plans, WEDGE representatives visited Nashville, Tennessee to review TRC's financial position, for the purposes of determining whether the stock should be sold and setting a purchase price. App. J. ¶ 14; App. K. ¶ 8.

These negotiations culminated in the execution in February, 1986 of a letter agreement regarding the sale of the stock (the "Letter Agreement"). App. J. ¶ 15; App. K. ¶ 9. The Letter Agreement essentially provided for the transfer of control of TRC from WEDGE to TRC management. *Id.* In reliance on the Letter Agreement, which WEDGE delivered to TRC management in Nashville, Third National again agreed to restructure its credit arrangements with TRC and its subsidiaries. App. J. ¶ 16; App. L. ¶ 10.

After the signing of the letter agreement, negotiations continued regarding the final form of the stock purchase agreement. App. J. ¶ 17; App. K. ¶ 10. During these negotiations, WEDGE raised issues regarding the treatment of the amounts it owed under the Tax Sharing Agreement. App. J. ¶ 18; App. K. ¶ 11. In fact, the status of the Tax Receivable became a pivotal point in negotiations surrounding the sale of the TRC stock. App. J. ¶ 19.

In order to allow the stock purchase to proceed, Third National agreed to WEDGE's request to forbear temporarily from attempting to collect the Tax Receivable from WEDGE. App. L. ¶ 12. WEDGE, Third National, and TRC then entered into an agreement (the "Tax Receivable Agreement") regarding the parties' respective rights in connection with the Tax Sharing Agreement.

App. J. ¶ 19; App. L. ¶ 12 and Exhibit A). The Tax Receivable Agreement provided that Third National and TRC would forbear from attempting to collect the Tax Receivable until certain conditions were met, but acknowledged that Third National could, under certain other conditions including TRC's default in the payment of its indebtedness to Third National, bring suit against WEDGE to recover the Tax Receivable. *Id.* The Tax Receivable Agreement recites that it was executed in Nashville, Tennessee. *Id.*

In late May or early June of 1986, WEDGE representatives again traveled to Nashville to finalize the details of the Tax Receivable Agreement and the stock purchase agreement. App. K. ¶ 10. WEDGE later completed its sale of its ownership interest in TRC to TRC management. App. J. ¶ 20; App. K. ¶ 12.

Subsequently, TRC defaulted on its loans from Third National. App. L. ¶ 4. In November of 1987 Third National brought suit against WEDGE in the United States District Court for the Middle District of Tennessee to recover the approximate sum of $2.6 million under the Tax Sharing Agreement. App. H. WEDGE then filed a motion to dismiss under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. Although the magistrate recommended denial of the motion, the district court, without rendering findings of fact or conclusions of law, rejected the magistrate's report and recommendation and granted WEDGE's motion to dismiss. App. D. The district court denied Third National's motion to reconsider. App. E. Third National appealed to the United States Court of Appeals for the Sixth Circuit.

B. The Opinion Below

The issue before the Sixth Circuit was whether a nonresident corporation could be subjected to the personal jurisdiction of a state in which it had established a long and continuous relationship with a wholly owned subsidiary, in an action brought by a secured party asserting the subsidiary's rights to recover amounts due under a contract between the parent and the subsidiary. Applying the three part test that it had earlier established in *Southern Machine Co. v. Mohasco Industries, Inc.*, 401 F.2d 374 (6th Cir. 1968), the Sixth Circuit held that due process requirements were satisfied and that the Tennessee court could exercise personal jurisdiction over the defendant.

The legal test applied by the court below derived from the three part test established in *Southern Machine*, as interpreted and expanded by subsequent decisions from this Court. That test is as follows:

> First, the defendant must purposefully avail itself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

401F.2d at 381.

The court below pointed to numerous acts of WEDGE that demonstrated to the court's satisfaction that WEDGE had "purposefully availed" itself of the privilege of acting in Tennessee or causing a consequence

there: WEDGE's 100% ownership of TRC, a corporation principally located in Tennessee; WEDGE's regular attendance at and participation in meetings held in Tennessee to review and direct TRC's operations; WEDGE's execution of and performance under the Tax Sharing Agreement, under which WEDGE shared income tax liability with Tennessee companies; WEDGE's active participation in negotiations with Third National regarding Third National's loans to TRC; and finally, WEDGE's execution, in Tennessee, of an agreement that directly addressed its potential liability under the Tax Sharing Agreement, the subject of the instant action. App. A. at 8. From these acts, the Court "ha[d] no hesitancy" in concluding that WEDGE had "purposefully availed" itself of acting and causing consequences in Tennessee. *Id.*

The court also had little difficulty in concluding that the second requirement of the *Southern Machine* test was met because Third National's cause of action to recover amounts due under the Tax Sharing Agreement had "a substantial connection" with and was "related to" WEDGE's forum related activities. App. A at 9-10. As the court noted, WEDGE entered into the Tax Sharing Agreement that is the subject of this action. App. A. at 10. WEDGE interjected itself in negotiations between Third National and TRC and made a $7.5 million capital infusion to induce Third National to continue to extend credit to TRC. *Id.* Finally, WEDGE executed, in Tennessee, a document stating the purported rights and obligations regarding the indebtedness and the Tax Sharing Agreement. App. A. at 10-11.

The court refused to accept WEDGE's argument that the second requirement in the *Southern Machine* test was not met because Third National's cause of action arose either from the Tax Sharing Agreement or from the

loan agreement between Third National and TRC, and not from WEDGE's contacts with Tennessee. Rather, the court held that the second requirement only meant that the cause of action have a "substantial connection with" the defendant's forum related activity. App. A. at 9. The facts recited above supplied that connection.

Finally, the court held that WEDGE had failed to present any considerations that would render the exercise of jurisdiction unreasonable. App. A. at 11-12. Noting Tennessee's interest in providing an effective avenue of redress for its residents, the court held that the *Southern Machine* test was satisfied and that WEDGE was subject to personal jurisdiction in Tennessee. *Id.* The Sixth Circuit denied WEDGE's motion for rehearing. App. F. WEDGE now seeks discretionary review by this Court.

SUMMARY OF ARGUMENT

The decision below was in accordance with the well-established body of law concerning due process limitations on personal jurisdiction over nonresident defendants. The decision below does not conflict with prior decisions from this Court or with decisions from other courts of appeals. Therefore, none of the considerations set forth in Supreme Court Rule 17 support the grant of a writ of certiorari.

REASONS FOR NOT ALLOWING THE WRIT

I. *The Opinion Below Is In Accord With This Court's Prior Decisions In International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L.Ed. 95 (1945) And Its Progeny.*

WEDGE apparently does not dispute the finding below that it purposefully directed its activities toward Tennessee. Nor does it assert that Tennessee's interest in this action, brought by a Tennessee bank, is insufficient to render jurisdiction reasonable. Rather, WEDGE invites this Court's review due to the supposed necessity to define further and to revise the parameters of the requirement that a cause of action "arise from" or be "related to" a nonresident defendant's contacts with a forum to support specific jurisdiction. The Court should decline this invitation because the question of the sufficiency of the connection between a plaintiff's cause of action and a defendant's contacts with the forum is a highly factual one. Not only is WEDGE's proposed alteration to the existing legal standard of questionable future utility, but the alteration is wholly unnecessary to resolve the instant dispute.

The test applied below is entirely consistent with this court's opinion in *Burger King Corp. v Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), this court's most recent pronouncement concerning due process limitations on personal jurisdiction in a contract case. There, this Court established a two part test for determining whether an exercise of personal jurisdiction comports with due process requirements. First, the court must find that the defendant has purposefully established minimum contacts with the forum and that the litigation results from alleged injuries that "arise out of or relate

to" those contacts. 471 U.S. at 472, 105 S.Ct. at 2182, 85 L.Ed.2d at 540-41. Second, the court must find that the exercise of personal jurisdiction would be reasonable. 471 U.S. at 476, 105 S.Ct. at 2184, 85 L.Ed.2d at 543. Writing for the majority, Justice Brennan stated that the first prong of the *Burger King* test is satisfied "if the defendant purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or relate to' those activities." 471 U.S. at 472, 105 S. Ct. at 2182, 85 L.Ed 2d at 540-41 (citations omitted). The test enunciated by Justice Brennan is precisely the same as that applied by the Sixth Circuit below. The Sixth Circuit applied the correct test.

WEDGE's contention that the legal test applied below "conflicts" with this Court's prior opinions in *Kulko v. California Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978) and *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958) is meritless because the factual situations are readily distinguishable. The issue in *Hanson* was whether a Florida court could exercise personal jurisdiction over a Delaware trust company in a dispute concerning the validity of a trust agreement executed by and between a Pennsylvania domiciliary and a Delaware trust company. Florida's only relationship to the dispute arose years later when the trust settlor moved there. Unlike the instant action, no relationship existed between the cause of action and the defendant's contacts with the forum. Accordingly, this Court held that the Florida court could not exercise personal jurisdiction over the Delaware trustee.

Similarly, in *Kulko*, this Court held that a California court could not exercise personal jurisdiction over a New York resident in a domestic dispute with his former wife, who had moved to California. The lower court had rested

its finding of personal jurisdiction on the father's acquiescence in his daughter's desire to live with her mother in California. This Court held that a father who had done nothing more than consent to allowing his daughter to spend some time in California had not "purposefully availed himself" of the benefits and protections of California's laws." 436 U.S. at 94, 98 S. Ct. at 1698, 56 L.Ed.2d at 142-43 (citations omitted.)

This Court in *Kulko* specifically distinguished the domestic situation presented there from the situation presented when a defendant seeks a commercial benefit from foreign activity. The Court noted:

> The cause of action herein asserted arises, not from the defendant's commercial transactions in interstate commerce, but rather from his personal, domestic relations. It thus cannot be said that appellant has sought a commercial benefit from solicitation of business from a resident of California that could reasonably render him liable to suit in state court.

436 U.S. at 97, 98 S. Ct. at 1690, 56 L.Ed.2d at 144. This Court further noted that there, as in *Hanson*, the separation agreement at issue "was entered into with virtually no connection with the forum state." *Id.*

The differences with the results reached below from the results reached in *Hanson* and *Kulko* derive not from the application of a different legal standard, but from factual scenarios at opposite ends of the spectrum. In *Hanson*, this Court found that no substantial relationship existed between the forum and the plaintiff's cause of action to determine the validity of the trust agreement. In *Kulko*, this Court found both that the defendant had not purposefully directed his activities toward California, and

that the cause of action — to modify a New York separation agreement — did not have a significant relation to the forum.

By contrast, the Sixth Circuit found that such significant relations did exist on the facts of the instant case. As the lower court noted, the very contract upon which Third National's claim is based is one executed by and between WEDGE and its Tennessee subsidiary. Moreover, WEDGE directly interjected itself in negotiations between its Tennessee subsidiary and its subsidiary's bank to induce Third National to extend additional credit to its subsidiary, and made a substantial capital infusion into its subsidiary to provide additional security for its subsidiary's debt to Third National. Finally, WEDGE entered into the Tax Receivable Agreement, an agreement it executed in Tennessee with a Tennessee company and a Tennessee bank, in which the parties stated their purported rights regarding the subsidiary's debt in general, and WEDGE's liability to the subsidiary was to Third National in particular. Under the facts, it can hardly be denied that a substantial relationship exists among the forum, the defendant and the cause of action. These facts distinguish the present action from *Hanson* and *Kulko*, and compel the result reached below.

Accordingly, it is clear that WEDGE's request to this Court is not that this Court review the Sixth Circuit's standard or the application of the standard to the undisputed facts, but rather to change the standard. Specifically, WEDGE asks this Court to hold that a forum cannot properly exercise personal jurisdiction over a nonresident defendant even if (a) the nonresident has purposefully directed his activities at forum residents, (b) the cause of action has a substantial connection with the defendant's forum related contacts, and (c) jurisdic-

tion would otherwise be reasonable, *unless* the cause of action technically "arises out of" the defendant's forum contacts. Such a requirement has never been, and should not now be, imposed by this Court. Moreover, its application to the facts of the instant case would not affect the result reached below.

WEDGE's insistence that a cause of action sued upon must formally "arise out of" a defendant's forum related activity finds no basis in prior decisions of this Court, and would represent a departure from controlling precedent. This Court has repeatedly and consistently held that a court may properly exercise specific jurisdiction over a nonresident defendant when a cause of action arises out of *or* relates to the defendant's forum related activity.

As the Sixth Circuit noted, the rule of law that the "arising from" requirement is satisfied if the cause of action is either 'related to' or 'connected with' the defendant's forum contacts in fact derives from the opinion of this Court in *International Shoe*. There, this Court stated:

> [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protections of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations *arise out of or are in connection with* the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can in most instances, hardly be said to be undue.

International Shoe Co. v. Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 160, 90 L. Ed. 95, 104 (1945). Later opinions from this Court are in accordance with this rule. *See*

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed.2d 404, 410-11 (1984); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed.2d 528, 540-41 (1985).

The only consideration advanced in support of WEDGE's view that a cause of action should formally "arise from" a defendant's in-state activities is that not imposing such a requirement would have a detrimental impact on interstate and international trade. According to WEDGE, the Sixth Circuit opinion would "subject local companies to the jurisdiction of states a continent away simply because they chose to deal with a national seller." This argument might have merit if the decision below had allowed for an account creditor to *create* jurisdiction over an account debtor in a distant forum by assigning a claim to a creditor located there. The requirement that the nonresident purposefully direct its activities toward the forum and create a "substantial connection" with the forum — a requirement expressly recognized by the Court below — precludes such a result.

Cogent arguments counsel against the imposition of such a new requirement. Limiting specific jurisdiction in the manner proposed by WEDGE would "subject constitutional standards under the Due Process Clause to the vagaries of the substantive law or pleading requirements of each state." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. at 427; 104 S. Ct. at 1879; 80 L.Ed.2d at 419 (J. Brennan, dissenting). As Justice Brennan noted, because constitutional restrictions are founded upon concepts of reasonableness and fairness to the defendant, the fact that a particular cause of action may not directly "arise out of" a particular contact to the forum should not be of controlling significance, so long as the defendant

has established contacts with the forum substantially related to the underlying cause of action. *Id.*

Moreover, the application of WEDGE's proposed rule to factual situations such as the one presented in the instant case would have a chilling effect on interstate commerce and trade. WEDGE's proposed rule of law would operate to deprive a forum of its jurisdiction over a nonresident in a cause of action based upon a substantial business contract with a resident based solely upon the resident's assignment of its contract rights to its local lender. Such a rule would hinder substantially the free assignability of such contractual rights. WEDGE's invitation to alter the present state of the law must therefore be rejected.

Moreover, even if this court were to alter the standard as suggested by WEDGE and hold that a cause of action must technically "arise out of" a nonresident's forum contacts, the change would not affect the result in the case at bar. Third National's cause of action against WEDGE is based upon and "arises out of" the Tax Sharing Agreement — a substantial business contract with a Tennessee subsidiary — and one of the primary contacts upon which the court below rested its finding. The fact that Third National's right to enforce the contract derives from a separate document — the loan agreement between Third National and TRC — does not alter or affect the analysis or the outcome.

II. The Decision Below Does Not Conflict With The Decisions of Other Federal Courts of Appeals by Treating Parent-Subsidiary Contracts as Jurisdictionally Significant.

WEDGE next asserts that a conflict exists among the circuits concerning the extent to which contacts between a corporate parent and its subsidiary are jurisdictionally significant. According to WEDGE, one line of authority, represented by the opinion below, holds that such contacts qualify as purposeful contacts with the forum for jurisdictional purposes. WEDGE suggests that this line of authority is inconsistent with the decision by this court in *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333, 45 S.Ct. 295, 69 L.Ed. 589 (1925). The other line of cases, WEDGE insists, holds that dealings between a parent and a subsidiary must be ignored altogether in determining whether the parent is subject to personal jurisdiction within the forum.

However, a review of *Cannon* and the other authorities cited by WEDGE reveals (a) that the decision of the court below is consistent with *Cannon*; and (b) that no "split of authority" exists among the circuits concerning the jurisdictional significance of parent-subsidiary contacts.

In *Cannon*, this Court merely held that the activities of a subsidiary within a forum cannot be attributed to the subsidiary's nonresident parent for the purpose of establishing general jurisdiction over the parent. That proposition has never been disputed or questioned by Third National. More importantly, its validity is not questioned nor its integrity compromised by the decision below. The court below simply held, correctly, that WEDGE's own actions directed toward its Tennessee subsidiary and the

subsidiary's Tennessee bank should be considered in determining whether and to what extent it "purposefully availed itself of the privilege of acting in the forum state or causing a consequence in the forum state." App. A. at 7, *quoting Southern Machine v. Mohasco Industries, Inc.*, 401 F.2d 374 (6th Cir. 1968). The decision below is plainly not inconsistent with *Cannon*.

The decision below is in accord with decisions from other circuits that address the relevancy of parent-subsidiary contacts. As WEDGE correctly notes, other circuits have plainly held that contacts between a parent and its subsidiary "count" for jurisdictional purposes. Such contacts are especially significant when the cause of action arises from or is related to those contacts. For example, in *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406 (9th Cir. 1977), the court held that a corporate parent was subject to personal jurisdiction in the subsidiary's forum for causes of action arising out of the parent's loan to its subsidiary. Similarly, the First Circuit has repeatedly held that although ownership of a forum subsidiary, along with contacts stemming from that ownership, may not *alone* be sufficient to subject the foreign corporation to suit within the forum, they are "relevant" factors to be considered in the jurisdictional calculus. *See, e.g., Volkswagen InterAmericanna, S.A. v. Rohlsen*, 360 F.2d 437, 440 (1st Cir.), *cert. denied*, 385 U.S. 919 (1966); *Engine Specialties, Inc. v. Bombardier Ltd.*, 454 F.2d 527, 529-30 (1st Cir. 1972); *Mangual v. General Battery Corp.*, 710 F.2d 15, 21 (1st Cir. 1983).

WEDGE has failed to cite to this Court any authorities that either dispute the holding in the above cases, or that suggest that any real split of authority exists among the circuits regarding the relevance of parent-subsidiary contacts. Rather, the cases cited by WEDGE correctly

hold that although ownership of a subsidiary within the forum does not automatically render a nonresident corporation amenable to suit there, the parent's own actions directed toward the forum might.

In *Southmark Corp. v. Life Investors, Inc.*, 851 F. 2d 763 (5th Cir. 1988) a case extensively relied upon by WEDGE, the court held that the actions of a subsidiary could not be imputed to the parent for the purpose of establishing general jurisdiction over the parent. Finding that the parent had itself directed no actions toward the forum, the court held that the forum could not exercise "specific jurisdiction" over the parent.

Similarly, in *Blount v. Peerless Chemicals, Inc.*, 316 F. 2d 695 (1963), the court was presented with the converse of that presented in *Southmark*, i.e. whether a *parent's* contacts with the forum could be imputed to the nonresident *subsidiary* to establish general jurisdiction over the subsidiary. The court held, correctly, that the contacts could not be imputed. However, the court noted that specific jurisdiction might be established if sufficient contacts existed among the nonresident, the cause of action, and the forum. The court expressly noted that specific jurisdiction is properly exercised if the cause of action sued upon "relates in some significant manner to the forum state . . ." 316 F. 2d at 700. The Court noted that this is especially true if the injured party is a resident of the forum. *Id.* Only after examining the contacts between the forum and the cause of action and finding them "far too tenous" to support jurisdiction, did the court affirm the lower court's order dismissing the action against the subsidiary. *Id.*

Finally, in *Harris v. Deere & Co.*, 223 F. 2d 161 (4th Cir. 1955) (*per curiam*), the court affirmed the dismissal

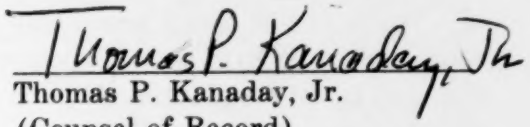
of an action against a parent corporation where process had been served on the defendant's wholly-owned subsidiary. The dismissal was affirmed only after the court specifically found that the parent had "no contacts whatever within the state upon which jurisdiction can be based" "unless the activities of [the subsidiary] are considered." 223 F. 2d at 162.

None of the cited cases supports the proposition advanced by WEDGE that a nonresident's own actions directed toward its forum subsidiary must be ignored for jurisdictional purposes. The argument against such an absolute rule is readily apparent when viewed in the context of the instant case. In short, WEDGE's position is that contracts between two strangers can be, but the same contracts between a corporate parent and its subsidiary cannot be, "contacts" for jurisdictional purposes. Applied to the instant case, that rule of law would lead to the result that the Tax Sharing Agreement that is the subject of this lawsuit, because it derives from the existence of the parent-subsidiary relationship, must be ignored altogether in determining whether a Tennessee court can exercise personal jurisdiction in a lawsuit arising out of that very agreement. The argument is untenable on its face, and finds no support in decisions from this Court or any other.

CONCLUSION

Third National respectfully submits that none of the factors enumerated in Supreme Court Rule 17 are applicable to the decision below, and that the petition for writ of certiorari should accordingly be denied.

Respectfully submitted,



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CERTIFICATE OF MAILING AND SERVICE

As a member of the bar of this Court, I certify that the appropriate number of copies of this Brief in Opposition To Petition To Writ of Certiorari were served upon the Clerk of this Court via overnight courier, and upon Mr. William H. White, 5100 First Interstate Bank Plaza, 1000 Louisiana, Houston, Texas 77002-5096, counsel of record for Petitioner WEDGE Group Incorporated, via United States mail, with first class postage prepaid, on this 28th day of December, 1989 and within the time permitted by the rules of this Court.

Thomas P. Kanaday Jr.
Thomas P. Kanaday, Jr.

Sworn to and subscribed before me, this the day of December, 1989.

Annette Roberts
Notary Public

ANNETTE ROBERTS
(Print name of notary here)

My Commission Expires: 1-23-93